

Guidelines for Public Testimony before the Small Business Regulatory Review Board

Public testimony on Wisconsin administrative rules is one important tool used by the Small Business Regulatory Review Board (SBRRB) to foster a more small-business friendly environment. This testimony guide is designed to assist small business or representatives of small business in understanding the types of testimonials that can come before the SBRRB.

By statute, there are two types of testimonies that a small business or representative of small business may present to the SBRRB:

- Challenges to a proposed administrative rule's analysis of the **economic** impact of the rule on small businesses.
- Challenges to an existing administrative rules or state guideline that place an **unnecessary burden** on the ability of small businesses to conduct their affairs.

General Guidelines for Testifying Before the SBRRB

1. Avoid discussing issues or concerns outside the scope of the SBRRB's authority. Testimony should only focus on the types of issues which the SBRRB can address in its reports and recommendations. It's important to understand that the SBRRB cannot change, stop, or delay a state agency's rulemaking process.
2. Submit written comments, outlining the challenges the administrative rule poses to small businesses prior to the Board's meeting. When possible, appropriate state agency representatives may be invited to attend the SBRRB meeting.
3. Complete and submit the applicable *Comment Questionnaire*.
4. Deliver comments to the Board:
 - In person;
 - In writing and read into the record by the Small Business Ombudsman;
 - By conference call; or
 - Through a proxy, such as trade organization leader, attorney or other representative designated by the small business.
5. Provide suggestions and recommendations for possible changes, compromises or alternative options to the rule if possible.
6. Use facts, figures, statistics and other data to quantify, validate and support your testimony.

Specific questions regarding testimony may be addressed to Carol Dunn, Department of Commerce Small Business Ombudsman at (608) 267-0297 or cdunn@commerce.state.wi.us.

Testimony Guidelines for Proposed New or Revised Administrative Rules

When an agency promulgates a rule, it is required to make a determination on whether or not the rule may impact small business. If the agency certifies the rule as having a small business impact, an economic impact analysis or **"Initial Regulatory Flexibility Analysis"** (IRFA) must be completed. Proposed rules affecting small businesses must be submitted, with an IRFA, to the SBRRB for review.

The SBRRB's authority allows them to make recommendations to the regulatory agencies on ways to reduce the economic impact of their rules on small business. Under state statute, SBRRB may submit a report to the Joint Legislative Council citing any non-compliance with the requirements of the IRFA. The Joint Legislative Council forwards the Board's report to the Standing Committee Chairs who will be assigned the final draft of the rule for consideration of adoption.

When providing testimony to the SBRRB, it is important to read the IRFA prepared by the regulatory agency. When properly and thoroughly prepared, the IRFA provides the following:

- Information on affected small businesses
- Fiscal impact of the proposed rule on affected small businesses
- Need and objectives of the proposed rule
- Methods the agency has considered in order to fulfill the rule's objective while mitigating the economic impact on small businesses

How to Find the IRFA

You can view the IRFA at: <https://apps4.dhfs.state.wi.us/admrules/public/Home> or obtain a copy through the Small Business Ombudsman. From the web site, you can also post your comments on the rule if the public hearing comment period is open.* After review of the rule's IRFA, please complete *Comment Questionnaire A (New or Revised Administrative Rules)*

Tips for Testifying

1. Limit testimony on proposed new and revised rules to information relating to the economic impact of the rule on small business and any deficiencies by the agency to take that impact into account. Please do not discuss issues related to any of the following:
 - Federal mandates requiring agency compliance;
 - Policy issues of the agency;
 - Individual bias to the rule without justifiable substantiation of its negative affect on small business;
 - Impacts on businesses that do not meet the small business definition (independently owned and operated, employing 25 or fewer full-time employees or having gross annual sales of less than \$5 million)
2. Limit testimony to ten to fifteen minutes. Speak only on behalf of the issues covered on the *Comments Questionnaire A (New or Proposed Administrative Rules)*. Try to focus on one or two main points.
3. Recognize that board members are not familiar with your business. Don't use technical terms that need further explanation.
4. Testimony that is negative, cynical or single out individuals from state agencies or government is rarely well received.
5. Use the Department of Commerce Small Business Ombudsman as a resource in clarifying how to present your information to the SBRRB. The Ombudsman wants you to succeed in adequately addressing your concern(s).

* While the Small Business Regulatory Review Board serves as the vehicle for small business in seeking an agency's compliance with the requirements of the IRFA, the public hearing on the proposed rule provides small business with the opportunity to submit their comments on the rule. These comments are made a part of the public record.

Comment Questionnaire A
(Proposed New or Revised Administrative Rules)

Testifiers Name: _____

Title or Name of Business: _____

Name of Rule: _____

Regulating Agency: _____

The following questions will help the Small Business Regulatory Review Board (SBRRB) determine if your inquiry falls within its statutory authority. Please answer the following questions as thoroughly as possible. The Department of Commerce's Small Business Ombudsman may contact you with additional questions regarding your issues.

Questions	Yes	No
Are you a small-business owner or a representative of a small business association? <i>Small Business means a business independently owned and operated with 25 or fewer full-time employees or annual sales under \$5 million.</i>	<input type="checkbox"/>	<input type="checkbox"/>
Is your comment about a <u>state</u> administrative rule?	<input type="checkbox"/>	<input type="checkbox"/>
Have you reviewed the agency's Initial Regulatory Flexibility Analysis and the Testimony Guidelines and will your comments relate only to the small business economic impact issues of this rule?	<input type="checkbox"/>	<input type="checkbox"/>

If you answered "yes" to all of the above please provide answers to the questions below in your testimony.

- Do you feel the analysis accurately describes the **types** of small businesses that will be affected by the proposed rule?
 - ✓ Explain why you feel the IRFA does not accurately describe the types of small businesses impacted by the rule.
 - ✓ Describe other types of small businesses you feel may be significantly impacted by the rule not covered in the IRFA.
- Do you feel the analysis accurately estimates the **number** of small businesses that will be affected by the proposed rule?
 - ✓ State your concerns with regard to the accuracy, integrity, objectivity and consistency of the data used by the agency in estimating the number of small businesses that will be affected.
 - ✓ Provide data or identify sources of information that substantiate the impact that the rule will have on small businesses (e.g., industry estimates, association and/or census data).
- Do you feel the analysis accurately describes the **reporting, recordkeeping** and other **compliance requirements** of the proposed rule and accurately estimates those costs?
 - ✓ Explain your cost-estimating process in calculating these compliance costs.
 - ✓ Explain how your cost-estimating process may differ from the cost-estimating process used by the agency.
- Do you feel the analysis accurately describes the **professional skills** necessary for the preparation of required reports?
 - ✓ Explain your cost-estimating process in calculating these compliance costs.
 - ✓ Explain how your cost-estimating process may differ from the cost-estimating process used by the agency.

Testimony Guidelines for Existing Administrative Rules or Guidelines

The SBRRB has the authority to review existing rules and guidelines of any state agency. Based on testimony presented, the SBRRB may determine an agency's rule or guideline may be "unnecessarily burdensome" on the ability of small businesses to conduct their affairs and issue a report on their findings. This report is submitted to Joint Committee for Review of Administrative Rules (JCRAR). The Joint Committee for Review of Administrative Rules may review the report or refer the Board's report to the presiding officer of each house of the legislature for referral to an appropriate committee.

The SBRRB's report may include any of the following observations or recommendations:

1. Questioning the continued need for the rule or guideline.
2. A compilation of complaints and comments received from the public regarding the rule or guideline.
3. Recommendations to reduce the complexity of the rule or guideline.
4. The extent to which the rule or guideline overlaps, duplicates, or conflicts with federal regulations, other state rules, or local ordinances.
5. The length of time since the rule or guideline has been evaluated.
6. The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule or guideline since the rule or guideline was promulgated.

Tips for Testifying

1. Your testimony on an existing rule should relate specifically to at least one of the six items mentioned above. Do not discuss issues related to the following:
 - State agency compliance requirements mandated by the federal government;
 - Necessary rules vital to the protection of public health, safety and the environment;
 - Individual bias to a rule or guideline without a basis to substantiate the negative affect it has on small business;
 - Impacts on businesses that do not meet the small business definition (independently owned and operated, employing 25 or fewer full-time employees or having gross annual sales of less than \$5 million)
2. Limit testimony to no longer than 15 minutes. Speak only on behalf of the issues that relate to the topics listed on the *Comments Questionnaire B (Existing Administrative Rules or Guidelines)*.
3. Provide possible alternatives and/or creative, flexible means for businesses to comply with the agency's requirements while reducing the negative impact of the rule or guideline.
4. Conclude your testimony with a specific request for action. What do you want the Board to do? Keep in mind the Board's authority and jurisdiction. Recommendations in the Board's report to the Joint Committee on Review of Administrative Rules are largely based on the testimony and supporting documents you present.
5. Recognize that board members are not familiar with your business. Don't use technical terms that need further explanation.
6. Testimony that is negative, cynical or single out individuals from state agencies or government is rarely well received.
7. Use the Department of Commerce Small Business Ombudsman as a resource in clarifying how to address the issue and how to present your information to the SBRRB. The Ombudsman wants you to succeed in adequately addressing your concern(s). See the following page for some example of some of the small business issues on existing rules or guidelines.

Examples of Issues Pertaining to Existing Rules

The following are examples of issues that may be presented to the SBRRB. Your testimony may include one or more of these examples. If in doubt about whether an issue can be brought before the SBRRB, please contact the Small Business Ombudsman at (608) 267-0297 for assistance.

- Provide examples of any negative impacts that a rule or guideline has on a substantial number of small businesses. Include evidence to support your position that a significant number of small businesses are impacted.
- Provide comments that relate to overly burdensome compliance requirements contained in a rule or guideline.
 - *Provide examples that support your position showing how the rule or guideline penalizes small business.*
 - *Provide examples supporting your position that the agency has not taken necessary steps to help small business avoid the fines and penalties.*
 - *Provide evidence of the inappropriateness of any proposed fines, penalties or damages that small business incur that result from the rule or guideline¹.*
- Provide comments and examples of how recent industry developments have changed how a rule or guideline impacts the ability of small business to operate.
- Provide comments showing how a rule or guideline is no longer enforced or has been superseded by a more recent regulatory adoption.
- Explain how eliminating this rule or guideline will positively impact your business.
- Provide examples of confusing, unreasonable or complicated compliance forms or guidelines.
- Provide examples of impediments to business growth and job creation that are caused by a rule or guideline.
- Provide examples of negative impacts to small business that result from overlaps in state agency administration of a rule or guideline.
- Provide alternative ways in which government agencies can work together to reduce bureaucratic red tape that results from overlapping agency authority.
- Provide comments and cite examples of how a rule or guideline is unnecessarily creating a disadvantage for you in competing against large business or businesses outside of Wisconsin.
- Provide evidence that a rule or guideline is not based on the most recent scientific, technical or economical information.
- Provide evidence that a rule or guideline does not represent a sensible approach to regulation and does not achieve the objectives established by the Legislature.
- Explain and substantiate the type and amount of compliance cost savings that small business would incur as a result of partially or entirely eliminating a rule.
- Provide evidence to support your assumption that a small business economic impact analysis had not been prepared by the agency during the rule-making process. Present any documents that reveal the actual costs to businesses that dispute the agency's analysis of the economic impact of the adopted rule².

¹ Wis. Stats. 227.114(6m) - A small business may commence an action against an agency for injunctive relief to prevent the imposition of a penalty if the small business is subject to the penalty as the result of any of the following:

1. The small business acted or failed to act due to the failure by the agency's employee, officer, or agent with regulatory responsibility for that legal requirement to respond to a specific question in a reasonable time.
2. The small business acted or failed to act in response to inaccurate advice given to the small business by the agency's employee, officer, or agent with regulatory responsibility for that legal requirement.

² Wis Stats. 227.14(2) requires that each agency shall, in cooperation with the Department of Administration, ensure the accuracy, integrity, objectivity and consistency of the data that is used when preparing a proposed rule and when completing an analysis of the proposed rule.

Comment Questionnaire B

(Existing Administrative Rules or Guidelines)

Testifiers Name: _____

Title or Name of Business: _____

Name of Rule: _____

Regulating Agency: _____

The following questions will help us assist you by determining if your inquiry falls within the statutory authority of the Small Business Regulatory Review Board. Please answer the following questions as thoroughly as possible. The Department of Commerce's Small Business Ombudsman may contact you with additional questions regarding your issues.

No.	Questions	Yes	No
A.	Are you a small-business owner or a representative of a small business association? <i>Small Business means a business independently owned and operated with 25 or fewer full-time employees and annual sales under \$5 million.</i>	<input type="checkbox"/>	<input type="checkbox"/>
B.	Is your comment about a <u>state</u> administrative rule which is not mandated by a federal requirement?	<input type="checkbox"/>	<input type="checkbox"/>
C.	Have you reviewed the testimony guidelines and are you prepared to present within your testimony an action(s) that you would like the Board to take on behalf.	<input type="checkbox"/>	<input type="checkbox"/>

If you answered "yes" to all of the above please select a topic(s) that you will address in your testimony.

<input type="checkbox"/>	The continued need for a rule or guideline.
<input type="checkbox"/>	The nature of the complaints and comments received from the public regarding the rule or guideline.
<input type="checkbox"/>	The complexity of the rule or guideline.
<input type="checkbox"/>	The extent to which the rule or guideline overlaps, duplicates, or conflicts with federal regulations, other state rules, or local ordinances.
<input type="checkbox"/>	The length of time since the rule or guideline has been evaluated.
<input type="checkbox"/>	The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule or guideline since the rule or guide was promulgated..